

REMARKS/ARGUMENTS

This amendment is responsive to the Office Action that issued April 15, 2005. In light of the following remarks, reconsideration and removal of the grounds for rejection are respectfully requested.

The Applicants would like to thank the Examiner for the indication that Claims 9, 10, 26, and 27 are allowed.

In the Office Action, Claims 1, 2, 5, 7, 16-18, 21, and 23 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 6,028,626 to Aviv (Aviv). Further, Claims 3-4 and 19-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Aviv. Claims 12-13 and 28-29 are rejected under 35 U.S.C. §103(a) as being unpatentable over Aviv. Moreover, Claims 8, 11, 14, 24-25 and 31 are rejected under 35 U.S.C. §103(a) as being unpatentable over Aviv in view U.S. Patent Number 6,628,835 (Brill). In addition, Claims 15 and 30 were rejected under 35 U.S.C. §103(a) as being unpatentable over Aviv in view of NMSU Police Department (NMSU). Claims 3, 4, 19 and 20 are canceled by this amendment, without prejudice and accordingly, the rejection of these claims are moot.

The above §102 and §103 rejections are respectfully traversed.

As a first point, "[i]t is axiomatic that for prior art to anticipate under § 102 it has to meet every element of the claimed invention ..." (See, *Hybritech Inc. v. Monoclonal Antibodies, Inc.*

802 F.2d 1367, 231 U.S.P.Q. 81, 90 (Fed. Cir. 1986).) "[A]n anticipation rejection requires a showing that each limitation of the claim must be found in a single reference, practice, or device." (See, In re Donahue, 766 F.2d 531, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).)

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of the claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984).

Yet Aviv is deficient in showing each element of the currently pending claims. Accordingly, the §102 rejections are improper.

Specifically, Aviv does not disclose or suggest "wherein said means for notifying includes a plurality of alert codes corresponding to a severity level of said at least one behavioral pattern associated with said set of predefined suspicious behaviors recognized by said pattern recognition means" as required by Claim 1, and as substantially required by Claim 16. While for arguendo, even if the Applicants accept the position taken in the Office Action (see, the Office Action, page 2, Response to Arguments) that "Aviv teaches that a plurality of alerts are generated ...", this hardly is sufficient even under an obviousness rejection, to render the above claim limitation as unpatentable. While Aviv does

mention that if it is light or dark during a detected suspicious behavior, it will respond differently (e.g., turn on the lights or not). However, this can certainly has no relation to the severity of the behavior pattern.

Accordingly, it is respectfully submitted that Claims 1 and 16 are allowable over Aviv and an indication to that effect is respectfully requested. Claims 2, 5, 7, 8, 11, 14, 15, 17, 18, 21, 23-25, 30, 31 respectively depend from one of Claims 1 and 16 and are therefore allowable for at least that reason as well as for the separately patentable elements contained therein. Accordingly, reconsideration and allowance of Claims 2, 5, 7, 8, 11, 14, 15, 17, 18, 21, 23-25, 30, 31 is respectfully requested.

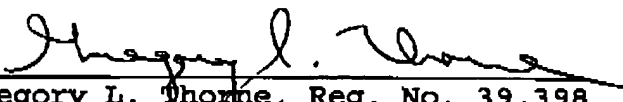
Further, it is respectfully submitted that Aviv does not disclose or suggest (emphasis provided) "said pattern recognition means further comprises recognizing that a particular shopper is carrying a bag" as required by Claim 12, and as substantially required by Claim 28. While Aviv does discuss a zoom capability camera, this is hardly sufficient to render the above claims elements obvious. The statement in the Office Action that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to use the zoom capability to focus in on objects other than people ..." is not supported by Aviv. The mere fact that the prior art device could be modified so as to produce

the claimed device is not a basis for an obviousness rejection unless the prior art suggested the desirability of the modification. See, In re Gordon, 733 F.2d 900, 902 (Fed. Cir. 1984); and In re Laskowski, 871 F.2d 115, 117 (Fed. Cir. 1989).

Even with the not suggested modification, Claims 12 and 28 cannot be read that broadly. Claims 12 and 28 have very specific limitations that cannot be gleamed from Aviv no matter how far one would desire to stretch, specifically recognizing that a particular shopper is carrying a bag. Accordingly, it is respectfully submitted that Claims 12 and 28 are allowably over Aviv and an indication to that effect is respectfully requested. Claims 13 and 29 respectively depend from one of Claims 12 and 28 and are therefore allowable for at least that reason as well as for the separately patentable elements contained therein. Accordingly, reconsideration and allowance of Claims 13 and 29 is respectfully requested.

This amendment places the instant application in condition for immediate allowance and such action is respectfully requested.

Respectfully submitted,

By   
Gregory L. Thorne, Reg. No. 39,398  
Senior Patent Counsel  
(914) 333-9665  
May 23, 2005